

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

DONALD W. TOENNIGES,

Plaintiff,

v.

WARDEN AMMONS, *et al.*,

Defendants.

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CASE NO.: 1:09-CV-165 (WLS)

**ORDER**

Before the Court is a Report and Recommendation from United States Magistrate Judge Thomas Q. Langstaff, filed June 14, 2010. (Doc. 39). It is recommended that Plaintiff's Motion for Preliminary Injunction (Doc. 19) be denied, that Plaintiff's Motion to Amend the Complaint (Doc. 20) be denied without prejudice, and that Plaintiff's Motion for Class Action Status (Doc. 22) be denied. (Doc. 39 at 1-3). Plaintiff timely filed an Objection. (Doc. 46).

For the following reasons, the objections set forth in Plaintiff's Objection (Doc. 46) are **OVERRULED** and United States Magistrate Judge Langstaff's June 14, 2010 Report and Recommendation (Doc. 39) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Plaintiff's Motion for Preliminary Injunction (Doc. 19) is **DENIED**, Plaintiff's Motion to Amend the Complaint (Doc. 20) is **DENIED WITHOUT PREJUDICE**, and Plaintiff's Motion for Class Action Status (Doc. 22) is **DENIED**.

Plaintiff's Objection (Doc. 46) addresses only Judge Langstaff's recommendation regarding Plaintiff's Motion to Amend the Complaint (Doc. 20). Thus, Plaintiff waives any objection to Judge Langstaff's recommendation regarding Plaintiff's Motion for Preliminary

Injunction (Doc. 19) and Plaintiff's Motion for Class Action Status (Doc. 22). The Court accepts and adopts those unopposed recommendations for reason of the findings made and reasons stated therein.

Plaintiff's Objection (Doc. 46) argues that his Motion to Amend the Complaint (Doc. 20) should be granted pursuant to Federal Rules of Civil Procedure 15(a)(1) and 15“(c)(C)” – which the Court construes as meaning Rule 15(c)(1)(C). The Court finds that Rule 15(c)(1)(C) addresses when an amendment to a pleading “relates back” to the date of the original pleading, Fed. R. Civ. P. 15(c)(1)(C), a procedural scenario that is inapplicable to Plaintiff's Motion to Amend the Complaint (Doc. 20). Additionally, Rule 15(a)(1) provides for amendment of pleadings as a matter of course, but such may occur only within 21 days after serving the pleading or within the earlier of 21 days after service of a responsive pleading or 21 days after service of a 12(b), 12(e), or 12(f) motion if the pleading is one to which a responsive pleading is required. Fed. R. Civ. P. 15(a)(1). The Docket reflects that none of those conditions are satisfied. (*See generally* Docket). The Court finds that Plaintiff's Objection (Doc. 46) fails to rebut the legally sound Report and Recommendation of Judge Langstaff.

For the foregoing reasons, the objections set forth in Plaintiff's Objection (Doc. 46) are **OVERRULED** and United States Magistrate Judge Langstaff's June 14, 2010 Report and Recommendation (Doc. 39) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Plaintiff's Motion for Preliminary Injunction (Doc. 19) is **DENIED**, Plaintiff's Motion to Amend the Complaint (Doc. 20) is **DENIED WITHOUT**

**PREJUDICE**, and Plaintiff's Motion for Class Action Status (Doc. 22) is **DENIED**.

**SO ORDERED**, this 26<sup>th</sup> day of August, 2010.

/s/ W. Louis Sands  
**THE HONORABLE W. LOUIS SANDS,**  
**UNITED STATES DISTRICT COURT**